HARBHAJAN SINGH

v.

SURUHANJAYA PASUKAN POLIS MALAYSIA & ANOR

COURT OF APPEAL, KUALA LUMPUR
ABDUL HAMID MOHAMAD JCA
MOHD SAARI YUSOFF JCA
MOHD NOOR AHMAD JCA
[CIVIL APPEAL NO: W-01-02-1999]
16 AUGUST 2002

POLICE: *Disciplinary proceedings - Dismissal - Delay by Police Commission in making decision to dismiss police officer - Whether Commission decided 'with all convenient speed' - Meaning of 'with all convenient speed' - Whether Commission must inform police officer as to which of the charges against him was his dismissal founded upon - Interpretation Acts 1948 & 1967, s. 54(2) - Public Officers (Conduct & Discipline) Regulations 1993 - Public Officers (Conduct & Discipline) (Chapter D) General Orders 1980*

ADMINISTRATIVE LAW: *Public servants - Dismissal - Police officer - Delay by Police Commission in making decision to dismiss police officer - Whether Commission decided 'with all convenient speed' - Meaning of 'with all convenient speed' - Whether Commission must inform police officer as to which of the charges against him was his dismissal founded upon - Interpretation Acts 1948 & 1967, s. 54(2) - Public Officers (Conduct & Discipline) Regulations 1993 - Public Officers (Conduct & Discipline) (Chapter D) General Orders 1980*

WORDS & PHRASES: *"with all convenient speed" - Interpretation Acts 1948 & 1967, s. 54(2) - Meaning of - Within a reasonable time having regard to the peculiar facts and circumstances of the case*

This was the plaintiff's appeal from the decision of the High Court disallowing his action for a declaration that his dismissal from the force as an Assistant Superintendent of Police was null and void. The principal grounds of appeal were that: (i) there was a 20-month delay before the Police Commission made its decision to dismiss the plaintiff; and (ii) the plaintiff was never informed as to which of the three charges against him was his dismissal founded upon.

Held:
Per Abdul Hamid Mohamad JCA

[1] Since the Public Officers (Conduct & Discipline) Regulations 1993 does not stipulate a time limit within which the Police Commission had to make its decision on the plaintiff's case, such a decision must, in keeping with s. 54(2) of the Interpretation Acts 1948 & 1967, be made "with all convenient speed" which phrase, according to decided authorities, means 'within a reasonable time having regard to the peculiar facts and circumstances of the case'. In the instant case, the learned judge had considered the various, exacting duties of the members of the Police Commission, which included *inter alia* the Minister of Home Affairs, the President of the Court of Appeal and the Inspector General of Police, and rightly concluded that the Police Commission had made its decision with all convenient speed. (pp 88 d-g & i)

[2] There is **no** requirement in the Public Officers (Conduct & Discipline) (Chapter D) General Orders 1980, or in any other law, that the Police Commission must inform the plaintiff as to which of the three charges his dismissal was founded upon. (p 89 e)

[Plaintiff's appeal dismissed.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Ini adalah rayuan plaintif terhadap keputusan Mahkamah Tinggi kerana menolak permohonan plaintif untuk deklarasi bahawa pemecatannya dari jawatan Penguasa Polis adalah batal dan tak sah. Alasan-alasan penting rayuan adalah bahawa: (i) terdapat kelengahan selama 20 bulan sebelum Suruhanjaya Polis membuat keputusan untuk memecatnya; dan (ii) beliau tidak diberitahu tentang pertuduhan manakah, di antara tiga pertuduhan yang dihadapkan kepadanya, yang menjadi asas kepada pemecatannya.

Diputuskan:
Oleh Abdul Hamid Mohamad HMR

[1] Oleh kerana Peraturan Pegawai-pegawai Awam (Kelakuan dan Disiplin) 1993 tidak menetapkan suatu tempoh dalam mana Suruhanjaya Polis perlu membuat keputusan terhadap kes plaintif, maka, bersesuaian dengan s. 54(2) Akta-Akta Pentafsiran 1948 & 1967, keputusan tersebut hendaklah dibuat 'dengan kepantasan yang patut' yang mana, mengikut keputusan autoriti-autoriti, bermaksud 'dalam masa yang munasabah dengan mengambilkira fakta khusus dan halkeadaan kes'. Dalam kes di sini, hakim perbicaraan telah mengambilkira keperbagaian dan beban

tugas yang dipikul oleh anggota-anggota Suruhanjaya Polis, yang antara lain termasuk Menteri Dalam Negeri, Presiden Mahkamah Rayuan dan Ketua Polis Negara, dan telah memutuskan dengan betul bahawa Suruhanjaya Polis telah membuat keputusan dengan kepantasan yang patut.

[2] Tidak ada peruntukan dalam Perintah Am Pegawai-pegawai Awam (Kelakuan dan Disiplin) (Bab 'D') 1980, atau mana-mana undang-undang sekalipun, yang mengkehendakki Suruhanjaya Polis memberitahu plaintif berkenaan pertuduhan yang manakah di antara tiga pertuduhan tersebut yang menjadi asas kepada pemecatannya.

[Rayuan plaintif ditolak.]

Case(s) referred to:
Ghazi Mohd Sani v. Mohd Haniff Omar, Ketua Polis Negara Malaysia & Anor [1994] 2 CLJ 333 ***(refd)***
SK Serajah v. State of West Bengal AIR [1975] SC 1517 ***(refd)***
Tai Choi Yu v. Government of Malaysia [1994] 2 CLJ 174 ***(foll)***

Legislation referred to:
Interpretation Acts 1948 and 1967, s. 54(2)

For the plaintiff - Karpal Singh; M/s Karpal Singh & Co
For the respondent - Azizah Nawawi

Reported by Gan Peng Chiang

JUDGMENT

Abdul Hamid Mohamad JCA:
The appellant was the plaintiff in the High Court. He filed a suit against the respondents seeking a declaration, in brief, that his dismissal as a police officer was null and void, and consequential orders. The High Court dismissed his action. He appealed to this court. We dismissed the appeal. Here are our grounds.

The appellant joined the Police Force in 1960. He rose to the rank Assistant Superintendent of Police (ASP). He held this rank until his dismissal.

On 30 September 1994, a show cause letter with a view to disciplinary action against him was forwarded to him. On 17 November 1994 the appellant made a written representation to the first respondent. By a letter dated 9 August 1996, the appellant was informed that he was dismissed from the force with effect form 29 June 1996. At the time when he received the letter of dismissal, he had passed his mandatory retirement age which fell on 7 July 1996 but his services were extended until the day the decision to dismiss him was made.

Two grounds were argued before us. The first ground was the delay of one year and eight months for the first respondent to make its decision to dismiss the appellant. The second ground was that the appellant was not informed on which of the three charges he was dismissed.

This is one appeal in which we agree entirely with the decision and the reasons thereto of the learned judge that we do not think it is necessary to repeat the same reasons at length.

The relevant provision is the Public Officers (Conduct and Discipline) Regulations 1993, in so far as it is relevant to the facts of this case, provides:

> If … the officer furnishes a representation which does not exculpate himself to the satisfaction of the appropriate Disciplinary Authority, the Disciplinary Authority shall then proceed to consider and decide the dismissal … of the officer.

No time limit is provided for the decision to be made.

Section 54(2) of the Interpretation Acts 1948 and 1967 *inter alia*, provides:

> Where no time is prescribed within which anything shall be done, that thing shall be done with all convenient speed ... .

As correctly pointed out by the learned judge, quoting Bhagwal J in *SK Serajah v. State of West Bengal* AIR [1975] SC 1517:

> Each case must depend on its own peculiar facts and circumstances.

Our own Supreme Court, in *Tai Choi Yu v. Government of Malaysia* [1994] 2 CLJ 174, has held:

> What is 'convenient speed' has been held by the courts to mean reasonable time within which an act has to be done, but always having regard to the facts and peculiar circumstances of each case.

We accept that that is the law.

The facts and circumstances of this case were discussed at length by the learned judge. He considered them under two heads, first, the constitution of the members of the Commission and secondly, the administrative machinery of the Commission.

Regarding the constitution of the Commission, as pointed out by the learned judge, it consists of nine members, headed by the Prime Minister of Malaysia in his then capacity as Minister of Home Affairs. The other members were the Inspector General of Police, the President of the Court

of Appeal and six other notable personalities. DW1, the Assistant Secretary of the Commission explained the procedures of the decision making process: The relevant documents were forwarded to the members of the Commission who had to study them and return them to the Commission Secretariat with their views. The views subsequently received from the members were "processed" and the decision would then be forwarded to the Chairman of the Commission.

The learned judge considered the extremely heavy duties of the members and the fact that the Commission's Secretariat was handling a great number of disciplinary cases and concluded that the Commission had discharged its duties within a reasonable time or, in the words of s. 54 of the Interpretation Acts "with all convenient speed".

We agree with him.

On the second ground, it was argued that the appellant should have been told on which charge(s) he was dismissed. On this ground also we agree entirely with the decision and the reasons thereto given by the learned judge, although the learned judge had misstated that the Commission accepted the appellant's representation on the first charge but not on the second and third charges for which he was dismissed. In fact, according to DW1, the Commission accepted the appellant's representation as to the third charge but not on the first and second charges. We agree with the learned judge that there is no requirement in Chapter D of the 1980 General Orders, or for that matter, in any law, that such a decision must be communicated to the appellant. We would like to reiterate what Jemuri Serjan CJ (Borneo), delivering the judgment of the Supreme Court, said in *Ghazi bin Mohd. Sani v. Mohd. Haniff bin Omar, Ketua Polis Negara Malaysia & Anor* [1994] 2 CLJ 333, which was also referred to by the learned judge:

> In dealing with Ch. D of the 1980 General Orders we remind ourselves that we are dealing with General Orders that have legislative effect and we must guard ourselves against adding words into them which were never intended.

We would add that, in dealing with tribunals like the Police Commission, we should also guard ourselves from turning them into a court of law trying a criminal case, which they were not, and was never intended to be.

On these grounds we dismissed the appeal with costs and ordered that the deposit be paid to the respondents towards taxed costs.